

REFERENCE TITLE: local development fees; procedures

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2259

Introduced by
Representative Biggs, Senator Paton: Representative Quelland

AN ACT

AMENDING SECTIONS 9-463.05 AND 11-1102, ARIZONA REVISED STATUTES; RELATING TO
LOCAL DEVELOPMENT FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-463.05, Arizona Revised Statutes, is amended to
3 read:

4 9-463.05. Development fees: imposition by cities and towns:
5 infrastructure improvements plan: annual report:
6 limitation on actions: definitions

7 A. A municipality may assess development fees to offset costs to the
8 municipality associated with providing necessary public services to a
9 development, including the costs of infrastructure, improvements, real
10 property, engineering and architectural services, financing, other capital
11 costs and associated appurtenances, equipment, vehicles, furnishings and
12 other personalty.

13 B. Development fees assessed by a municipality under this section are
14 subject to the following requirements:

15 1. Development fees shall result in a beneficial use to the
16 development.

17 2. Monies received from development fees assessed pursuant to this
18 section shall be placed in a separate fund and accounted for separately and
19 may only be used for the purposes authorized by this section. Monies
20 received from a development fee identified in an infrastructure improvements
21 plan adopted or amended pursuant to subsection D of this section shall be
22 used to provide the same category of necessary public service for which the
23 development fee was assessed **FOR THE BENEFIT OF THE SAME AREA, AS DEFINED IN**
24 **THE INFRASTRUCTURE IMPROVEMENTS PLAN, WITHIN WHICH THE DEVELOPMENT FEE WAS**
25 **ASSESSED**. Interest earned on monies in the separate fund shall be credited
26 to the fund.

27 3. The schedule for payment of fees shall be provided by the
28 municipality. **BASED ON THE COST IDENTIFIED IN THE INFRASTRUCTURE IMPROVEMENTS**
29 **PLAN**, the municipality shall provide a credit toward the payment of a
30 development fee for the required **OR AGREED TO** dedication of public sites,
31 improvements and other necessary public services included in the
32 infrastructure improvements plan and for which a development fee is assessed,
33 to the extent the public sites, improvements and necessary public services
34 are provided by the developer. The developer of residential dwelling units
35 shall be required to pay development fees when construction permits for the
36 dwelling units are issued, or at a later time if specified in a development
37 agreement pursuant to section 9-500.05. If a development agreement provides
38 for fees to be paid at a time later than the issuance of construction
39 permits, the deferred fees shall be paid no later than fifteen days after the
40 issuance of a certificate of occupancy. The development agreement shall
41 provide for the value of any deferred fees to be supported by appropriate
42 security, including a surety bond, letter of credit or cash bond.

43 4. The amount of any development fees assessed pursuant to this
44 section must bear a reasonable relationship to the burden imposed ~~upon~~ **ON** the
45 municipality to provide additional necessary public services to the

1 development. The municipality, ~~in determining the extent of the burden~~
2 ~~imposed by the development,~~ shall consider, among other things, FORECAST the
3 contribution ~~made or~~ to be made in the future in cash or by taxes, fees, ~~or~~
4 assessments ~~by~~ OR OTHER SOURCES OF REVENUE DERIVED FROM the property owner
5 towards the capital costs of the necessary public service covered by the
6 development fee AND SHALL INCLUDE THESE CONTRIBUTIONS IN DETERMINING THE
7 EXTENT OF THE BURDEN IMPOSED BY THE DEVELOPMENT.

8 5. If development fees are assessed by a municipality, such fees shall
9 be assessed in a nondiscriminatory manner.

10 6. In determining and assessing a development fee applying to land in
11 a community facilities district established under title 48, chapter 4,
12 article 6, the municipality shall take into account all public infrastructure
13 provided by the district and capital costs paid by the district for necessary
14 public services and shall not assess a portion of the development fee based
15 on the infrastructure or costs.

16 C. A municipality shall give at least sixty days' advance notice of
17 intention to assess a new or modified development fee and shall release to
18 the public a written report that identifies the methodology for calculating
19 the amount of the development fee, explains the relationship between the
20 development fee and the infrastructure improvements plan, includes
21 documentation that supports the assessment of a new or modified development
22 fee and identifies any index or indices to be used for automatic adjustment
23 of the development fee pursuant to subsection ~~F~~ G of this section and the
24 timing of those adjustments. The municipality shall conduct a public hearing
25 on the proposed new or modified development fee at any time after the
26 expiration of the sixty day notice of intention to assess a new or modified
27 development fee and at least thirty days prior to the scheduled date of
28 adoption of the new or modified fee by the governing body. A development fee
29 assessed pursuant to this section shall not be effective until seventy-five
30 days after its formal adoption by the governing body of the municipality.
31 Nothing in this subsection shall affect any development fee adopted prior to
32 July 24, 1982.

33 D. Before the assessment of a new or modified development fee, the
34 governing body of the municipality shall adopt or amend an infrastructure
35 improvements plan. The municipality shall conduct a public hearing on the
36 infrastructure improvements plan at least thirty days before the adoption or
37 amendment of the plan. The municipality shall release the plan to the
38 public, make available to the public the documents used to prepare the plan
39 and provide public notice at least sixty days before the public hearing,
40 subject to the following:

41 1. An infrastructure improvements plan may be adopted concurrently
42 with the report required by subsection C of this section, and the
43 municipality may provide for and schedule the notices and hearings required
44 by this subsection together with the notices and hearings required by
45 subsection C of this section.

2. A municipality may amend an infrastructure improvements plan without a public hearing if the amendment addresses only elements of necessary public services that are included in the existing infrastructure improvements plan. The municipality shall provide public notice of those amendments at least fourteen days in advance of their effective date.

E. For each necessary public service that is the subject of a development fee, the infrastructure improvements plan shall:

1. Estimate future necessary public services that will be required as a result of new development **IN THE AREA, AS DEFINED IN THE INFRASTRUCTURE IMPROVEMENTS PLAN, WITHIN WHICH THE DEVELOPMENT FEE WILL BE ASSESSED** and the basis for the estimate, **INCLUDING A COMPARISON OF THE NECESSARY PUBLIC SERVICES PROVIDED TO EXISTING DEVELOPMENT AND THE NECESSARY PUBLIC SERVICES TO BE PROVIDED TO NEW DEVELOPMENT.**

2. Forecast the costs of infrastructure, improvements, real property, financing, other capital costs and associated appurtenances, equipment, vehicles, furnishings and other personalty that will be associated with meeting those future needs for necessary public services.

3. FORECAST THE REVENUE SOURCES THAT WILL BE AVAILABLE TO FUND THE NECESSARY PUBLIC SERVICES and estimate the time required to finance and provide the necessary public services.

F. EXCEPT FOR ADJUSTMENTS PURSUANT TO SUBSECTION G OF THIS SECTION, A MUNICIPALITY'S DEVELOPMENT FEE ORDINANCE SHALL PROVIDE THAT A NEW DEVELOPMENT FEE OR AN INCREASED PORTION OF A MODIFIED DEVELOPMENT FEE SHALL NOT BE ASSESSED AGAINST A DEVELOPMENT FOR TWENTY-FOUR MONTHS AFTER THE DATE OF THE MUNICIPALITY'S FINAL APPROVAL OF THE DEVELOPMENT, PROVIDED THAT NO MATERIAL CHANGES ARE MADE TO THE SITE PLAN OR SUBDIVISION PLAT THAT WAS THE SUBJECT OF THE FINAL APPROVAL. THE TWENTY-FOUR MONTH PERIOD SHALL NOT BE EXTENDED BY A RENEWAL OR AMENDMENT OF THE SITE PLAN OR THE FINAL SUBDIVISION PLAT THAT WAS THE SUBJECT OF THE FINAL APPROVAL. THE MUNICIPALITY SHALL ISSUE, ON REQUEST, A WRITTEN STATEMENT OF THE DEVELOPMENT FEE SCHEDULE APPLICABLE TO THE DEVELOPMENT.

~~F.~~ **G.** A municipality may automatically adjust a development fee on an annual basis without a public hearing if the adjustment is based on a nationally recognized index applicable to the cost of the necessary public service that is the subject of the development fee and the adjustment mechanism is identified in the report required by subsection C of this section. The municipality shall provide public notice of those adjustments at least thirty days in advance of their effective date.

~~G.~~ **H.** Each municipality that assesses development fees shall submit an annual report accounting for the collection and use of the fees. The annual report shall include the following:

1. The amount assessed by the municipality for each type of development fee.

2. The balance of each fund maintained for each type of development fee assessed as of the beginning and end of the fiscal year.

3. The amount of interest or other earnings on the monies in each fund as of the end of the fiscal year.

4. The amount of development fee monies used to repay:

(a) Bonds issued by the municipality to pay the cost of a capital improvement project that is the subject of a development fee assessment.

(b) Monies advanced by the municipality from funds other than the funds established for development fees in order to pay the cost of a capital improvement project that is the subject of a development fee assessment.

5. The amount of development fee monies spent on each capital improvement project that is the subject of a development fee assessment and the physical location of each capital improvement project.

6. The amount of development fee monies spent for each purpose other than a capital improvement project that is the subject of a development fee assessment.

~~H.~~ I. Within ninety days following the end of each fiscal year, each municipality shall submit a copy of the annual report to the city clerk. Copies shall be made available to the public on request. The annual report may contain financial information that has not been audited.

~~I.~~ J. A municipality that fails to file the report required by this section shall not collect development fees until the report is filed.

~~J.~~ K. Any action to collect a development fee shall be commenced within two years after the obligation to pay the fee accrues.

~~K.~~ L. For the purposes of this section, ~~:-~~:

1. "FINAL APPROVAL" MEANS:

(a) FOR A NONRESIDENTIAL OR MULTIFAMILY DEVELOPMENT, THE APPROVAL OF A SITE PLAN OR, IF NO SITE PLAN IS SUBMITTED FOR THE DEVELOPMENT, THE APPROVAL OF A FINAL SUBDIVISION PLAT.

(b) FOR A SINGLE FAMILY RESIDENTIAL DEVELOPMENT, THE APPROVAL OF A FINAL SUBDIVISION PLAT.

2. "Infrastructure improvements plan" means one or more written plans that individually or collectively identify each public service that is proposed to be the subject of a development fee and otherwise complies with the requirements of this section, and may be the municipality's capital improvements plan.

Sec. 2. Section 11-1102, Arizona Revised Statutes, is amended to read:

11-1102. County development fees; annual report

A. If a county has adopted a capital improvements plan, the county may assess development fees within the covered planning area in order to offset the capital costs for water, sewer, streets, parks and public safety facilities determined by the plan to be necessary for public services provided by the county to a development in the planning area.

B. Development fees assessed under this section are subject to the following requirements:

1. Development fees shall result in a beneficial use to the development.

2. Monies received from development fees shall be placed in a separate fund and accounted for separately and may only be used for the purposes authorized by this section. Interest earned on monies in the separate fund shall be credited to the fund.

3. The county shall prescribe the schedule for paying the development fees. The county shall provide a credit toward the payment of the fee for the required dedication of public sites and improvements provided by the developer for which that fee is assessed. The developer of residential dwelling units shall be required to pay the fees when construction permits for the dwelling units are issued.

4. The amount of any development fees must bear a reasonable relationship to the burden of capital costs imposed on the county to provide additional necessary public services to the development. In determining the extent of the burden imposed by the development, the county shall consider, among other things, the contribution made or to be made in the future in cash by taxes, fees or assessments by the property owner toward the capital costs of the necessary public service covered by the development fee.

5. Development fees shall be assessed in a nondiscriminatory manner.

6. In determining and assessing a development fee applying to land in a community facilities district established under title 48, chapter 4, article 6, the county shall take into account all public infrastructure provided by the district and capital costs paid by the district for necessary public services and shall not assess a portion of the development fee based on the infrastructure or costs.

7. THE COUNTY SHALL NOT ASSESS OR COLLECT DEVELOPMENT FEES FROM A SCHOOL DISTRICT OR CHARTER SCHOOL, OTHER THAN FEES ASSESSED OR COLLECTED FOR STREETS AND WATER AND SEWER UTILITY FUNCTIONS.

C. Before assessing or increasing a development fee, the county shall:

1. Give at least one hundred twenty days' advance notice of intention to assess a new or increased development fee.

2. Release to the public a written report including all documentation that supports the assessment of a new or increased development fee.

3. Conduct a public hearing on the proposed new or increased development fee at any time after the expiration of the one hundred twenty day notice of intention to assess a new or increased development fee and at least fourteen days before the scheduled date of adoption of the new or increased fee.

D. A development fee assessed pursuant to this section is not effective for at least ninety days after its formal adoption by the board of supervisors.

E. Each county that assesses development fees shall submit an annual report accounting for the collection and use of the fees. The annual report shall include the following:

1. The amount assessed by the county for each type of development fee.

1 2. The balance of each fund maintained for each type of development
2 fee assessed as of the beginning and end of the fiscal year.

3 3. The amount of interest or other earnings on the monies in each fund
4 as of the end of the fiscal year.

5 4. The amount of development fee monies used to repay:

6 (a) Bonds issued by the county to pay the cost of a capital
7 improvement project that is the subject of a development fee assessment.

8 (b) Monies advanced by the county from funds other than the funds
9 established for development fees in order to pay the cost of a capital
10 improvement project that is the subject of a development fee assessment.

11 5. The amount of development fee monies spent on each capital
12 improvement project that is the subject of a development fee assessment and
13 the physical location of each capital improvement project.

14 6. The amount of development fee monies spent for each purpose other
15 than a capital improvement project that is the subject of a development fee
16 assessment.

17 F. Within ninety days following the end of each fiscal year, each
18 county shall submit a copy of the annual report to the clerk of the board of
19 supervisors. Copies shall be made available to the public on request. The
20 annual report may contain financial information that has not been audited.

21 G. A county that fails to file the report required by this section
22 shall not collect development fees until the report is filed.

23 H. This section does not affect any development fee adopted before May
24 18, 2000.

25 Sec. 3. Applicability

26 Section 9-463.05, subsection F, Arizona Revised Statutes, as amended by
27 this act, does not apply to any development that received its final approval
28 before January 1, 2010.

29 Sec. 4. Effective date

30 Section 9-463.05, Arizona Revised Statutes, as amended by this act, is
31 effective from and after December 31, 2009.